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Human rights situations that require the Council's attention

Written statement* submitted by Lawyers' Rights Watch Canada, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2018]

* Issued as received, in the language(s) of submission only.

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Saudi Arabia: Persistent gross, widespread and systematic violations of human rights while a member of the UN Human Rights Council**

I. Saudi Arabia's Council membership undermines human rights

UN bodies and experts have documented gross, widespread and systematic violations of human rights by the Kingdom of Saudi Arabia throughout its membership on the Council since January 2014. Violations include arbitrary detention, denial of due process and fair trials, torture and ill-treatment, violation of rights of women and children, and violations of international humanitarian law. Saudi Arabia systematically targets human rights defenders (defenders) including reprisals against defenders seeking to cooperate with UN bodies.[1]

Saudi Arabia has failed to "uphold the highest standards in the promotion and protection of human rights," and to "fully cooperate with the Council,"[2] including persistent disregard of recommendations of UN Treaty Bodies, Universal Periodic Reviews (UPR) and Special Procedures. The Council's authority is undermined by Saudi Arabia's continued membership in the face of its gross, unremedied and persistent violations of fundamental human rights.[3]

LRWC and GCHR request the Council to recommend that the General Assembly (GA):

a. Suspend Saudi Arabia's Council membership pursuant to Resolution 60/251, Article 8;
b. In consultation with civil society,[4] adopt election reform, nominee pledges and procedures for monitoring and suspension of members necessary to ensure that Council membership complies with Resolution 60/251, Article 9.

II. Saudi Arabia's international human rights obligations

As a UN member, Saudi Arabia is obligated to uphold the UN Charter, the Universal Declaration on Human Rights (UDHR) and other international law, including:

> the absolute prohibition of torture, the prohibition of the arbitrary deprivation of the right to life and of the prohibition of arbitrary deprivation of liberty, the fundamental principles of fair trial and due process, including the presumption of innocence and the principle of non-discrimination. These rights form part of customary international law. They are proclaimed in the Universal Declaration of Human Rights (UDHR) and are norms of *jus cogens* (peremptory norms of international law) from which no derogations are permissible.[5]

Saudi Arabia is a State Party to the:

- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT),
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which guarantees rights of everyone, without discrimination, to equality before the law in the enjoyment of rights to expression, peaceful assembly and association (Article 5);
- Convention on the Rights of the Child (CRC), and its Optional Protocols on the sale of children (OP-CRC-SC) and on children and armed conflict (OP-CRC-AC);
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW);
- Geneva Conventions (GC) I through IV and Additional Protocols (AP) I and II;
- Arab Charter on Human Rights, which reaffirms the provisions of the UN Charter, UDHR, and the UN International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights.

Saudi Arabia participated in the adoption by consensus of the 1999 UN GA Declaration on Human Rights Defenders,[6] and did not oppose 2016 Council and GA resolutions calling for protection of defenders from threats including judicial harassment and arbitrary detention.[7]

III. Saudi Arabia's pattern of gross and systematic violations of human rights

Saudi Arabia has persisted in the widespread and systematic arbitrary arrests and detentions of defenders. It routinely uses overbroad charges, together with unfair trials, and denial of due process to arbitrarily imprison defenders for peacefully exercising internationally protected rights to expression, association and assembly for purposes of legitimate human rights advocacy.

A. Arbitrary detention of human rights defenders: Violation of fair trial rights

Since September 2017, dozens of defenders have been arbitrarily detained, joining an estimated 100 already wrongly imprisoned.[8]

The UN Working Group on Arbitrary Detention (WGAD) has issued dozens of opinions recommending immediate release and compensation for arbitrarily detained defenders.[9] In 2015 the WGAD concluded that the imprisonment of nine defenders violated the UDHR (articles 9, 10, 19 and 20), and was arbitrary and recommended immediate release and compensation as the adequate remedy in each case.[10]

In 2013 UPR recommendations[11] included concerns about Saudi Arabia's use of criminal laws and procedures that violate the UDHR and UNCAT including judicially sanctioned corporal punishment. Many states recommended that Saudi Arabia amend penal laws to comply with international law obligations.[12] The 2009 UPR included recommendations that Saudi Arabia abolish corporal punishment, and other torture and ill-treatment, such as "public floggings, eye gouging, flogging of school children, and amputation of limbs in particular."[13] Saudi Arabia has not complied with these recommendations.

In 2014, the UN Special Rapporteur (SR) report on human rights and counter-terrorism concluded that *Penal Law for Crimes of Terrorism and its Financing* "fails to comply with international human rights standards of legal certainty," and "strongly condemns use of counter terrorism legislation with penal sanctions against individuals peacefully exercising their rights to freedom of expression, as well as freedom of … belief and freedom of peaceful association and assembly."[14] The SR found that Saudi Arabia's judiciary lacks independence and impartiality and the Specialised Criminal Courts fail to ensure fair trials or habeas corpus and allow secret trials without defence lawyers and trials *in absentia* with no effective defence.[15]

Former UN High Commissioner for Human Rights (HCHR) Navi Pillay denounced the continuing use of overbroad counter-terrorism legislation to imprison defenders, stating, "[p]roceedings against human rights defenders in the Specialised Penal Court, as well as in other courts in Saudi Arabia, have fallen short of international fair trial standards."[16]

On 2 January 2018, five UN experts decried Saudi Arabia's persistent use of anti-terror laws to persecute peaceful activists and noted that repeated calls for reform from Council remained unheeded.[17]

B. Torture and ill-treatment

The WGAD has found that numerous detained persons have been tortured and ill-treated.[18] The SR on counter-terrorism and human rights concluded that Saudi Arabia's "theoretical" legal protections against torture are "illusory," noting that despite more than 3,000 formal allegations of torture or ill-treatment between 2009 and 2015, there have been no prosecutions of those responsible.[19] The 2016 Concluding Observations of the UN Committee Against Torture (CAT) expressed deep concern about numerous reports of torture or ill-treatment in detention and called for an end to torture by public flogging, limb amputations, and beheading.[20] Despite these recommendations, a defender was arrested on 6 July 2018 and detained incommunicado after filing a formal complaint of torture.[21] A woman arbitrarily detained since December 2015 for participating in peaceful protests could face beheading after the prosecutor recommended the death penalty in August 2018.[22]

C. Women's rights

Saudi Arabia has persistently declined to implement CEDAW recommendations.[23] Instead of implementing CEDAW's March 2018 recommendations to refrain from reprisals against women defenders, Saudi Arabia recently arrested and detained more than 20 women defenders[24] and ignored the request of nine SRs to free them.[25]

D. Children's rights

Saudi Arabia has rejected or ignored UPR recommendations[26] and Concluding Observations of the CRC Committee[27] including to:

- End life imprisonment and execution of juvenile offenders, including death sentences for children participating in peaceful demonstrations;
- End torture and ill-treatment of children including coerced confessions; and
- Ensure legal representation for children.

E. Violations of international humanitarian law

Concerns about Saudi Arabia's grave violation of international humanitarian law in the armed conflict in Yemen were raised by the CRC Committee in 2016,[28] the Office of the High Commissioner for Human Rights (OHCHR) in 2017[29] and 2018,[30] and the UN Secretary General who said Yemen was experiencing the worse humanitarian crisis in the world with over 22 million in need of humanitarian assistance.[31]

The OHCHR concluded that the majority (over 61%) of civilian conflict-caused casualties were caused by air strikes by the Saudi-led coalition.[32] Fifty-one people including 40 children were killed by the Saudi Arabia-led coalition bombing of a bus and market on 9 August 2018.[33] The OHCHR documented 6,385 civilians killed and more than 10,000 civilians wounded between March 2015 and May 2018.[34] At the Council's 36th session, a Group of Eminent Experts on Yemen was created, which 55 international NGOs say must be renewed and improved through "enhancement of its reporting structure and strengthening language on accountability."[35]

IV. Recommendations

LRWC and GCHR ask Council to:

c. Recommend to the GA that Saudi Arabia be suspended from the Council pursuant to Resolution 60/251, Article 8;
d. In consultation with civil society, adopt election reform, nominee pledges and procedures for monitoring and suspension of members necessary to ensure that Council membership complies with Resolution 60/251, Article 9;
e. Enhance the reporting structure of the Group of Eminent Experts on Yemen to include comprehensive investigations of violations of international human rights and humanitarian law by Saudi Arabia in Yemen.

*Footnotes in this report are numbered but omitted. A fully footnoted version of this report is found at https://www.lrwc.org/?p=13350.

**Gulf Centre for Human Rights (GCHR), NGO without consultative status, also shares the views expressed in this statement.